

May 18, 2021

**VIA ECF**

Hon. Paul A. Engelmayer  
United States District Court Judge  
United States Courthouse  
40 Foley Square  
Courtroom 1305  
New York, New York 10007

**Re: *United States v. David Binet*, No. 19 Cr. 824 (PAE)**

Dear Judge Engelmayer:

We represent David Binet in the above-captioned case. Because Mr. Binet has yet to receive his Bureau of Prisons (“BOP”) designation, and due to the ongoing Covid-19 pandemic, we write to request that the Court adjourn Mr. Binet’s surrender date from May 28, 2021 until October 1, 2021.

As an initial matter we make this request to afford the BOP an opportunity to designate Mr. Binet to a minimum-security facility to serve his term of incarceration, rather than requiring Mr. Binet to report to the MCC. *See Bureau of Prisons*, “Designations” (“The Bureau attempts to designate inmates to facilities commensurate with their security and program needs,” which are determined based on a number of criteria, including “the level of security and staff supervision the inmate requires,” and “the level of security and staff supervision the institution provides”).<sup>1</sup> As a non-violent, first time offender, Mr. Binet should not be required to serve any portion of his sentence in the MCC, a maximum security facility, where the conditions have been particularly horrific during the Covid-19 pandemic. *See, e.g., United States v. Days*, No. 19-cr-619 (CM), Sentencing Tr. 19:13-14,18-19 (Apr. 29, 2021) (in sentencing defendant who served pretrial detention at the MCC, Chief Judge McMahon described the MCC as a deteriorating facility that “lurch[es] from crisis to crisis,” where the conditions are as “disgusting, [and] inhuman as anything I’ve heard about any Colombian prison.”).

Further, even as Covid-19 cases are decreasing in New York and in many parts of the country, serious risks from the virus persist, particularly in jails and prisons. “In recent weeks,” there has been an alarming spread of “more contagious variant . . . in prisons,” and “[p]ublic health officials say the presence of variants in prisons is likely to be more widespread than known because most facilities do not regularly screen for them.” *See* “Covid-19: Infections Among U.S. Prisoners

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<sup>1</sup> Available at: [https://www.bop.gov/inmates/custody\\_and\\_care/designations.jsp](https://www.bop.gov/inmates/custody_and_care/designations.jsp).

Have Been Triple Those of Other Americans,” *New York Times* (Apr. 19, 2021).<sup>2</sup> “These factors have left the likelihood of eliminating future outbreaks uncertain, public health experts say, even after much of the nation is vaccinated.” *Id.*; see also Apoorva Mandavilli, “Reaching ‘Herd Immunity’ Is Unlikely in the U.S., Experts Now Believe,” *New York Times* (May 3, 2021) (“there is widespread consensus among scientists and public health experts that the herd immunity threshold is not attainable — at least not in the foreseeable future, and perhaps not ever . . . . It is already clear, however, that the virus is changing too quickly, new variants are spreading too easily and vaccination is proceeding too slowly for herd immunity to be within reach anytime soon.”).<sup>3</sup> Thus, even while the Bureau of Prisons is in the process of vaccinating inmates, several prisons in the New York area where Mr. Binet is likely to be designated continue to experience persistent Covid-19 outbreaks. See, e.g., <https://www.bop.gov/coronavirus/> (reporting the following confirmed COVID-19 infections: FCI Otisville – 10 inmates, and 1 staff; FCC Allenwood – 1 staff; USP Lewisburg – 1 staff).<sup>4</sup>

Given Mr. Binet’s serious heart condition, the elevated risk of contracting Covid-19 while incarcerated places him in mortal danger. (See David Binet Sentencing Mem., ECF Doc. 53 at 25-25 (Nov. 30, 2020).) The Court recognized as much in sentencing Mr. Binet. See Sentencing Tr. 21:3-9 (Dec. 14, 2020) (“the risk from COVID is likely to persist in this country in general and our prisons in particular for some time even after the pandemic abates and even for people who have been vaccinated, and there probably will be heightened restrictions in prison for some time to come. And your heart condition in particular puts you at heightened risk.”).) Because “the Court has considerable discretion when to set [Mr. Binet’s] surrender date,” and as the Court articulated during Mr. Binet’s sentencing, that “is the primary way for th[e] Court to minimize [his] risk of exposure to COVID,” we respectfully request that the Court adjourn Mr. Binet’s surrender date until October 1, 2021. Sentencing Tr. 20:13-17 (Dec. 14, 2020).<sup>5</sup> This extension will allow for the Covid-19 crisis to abate further, and protect Mr. Binet from an increased risk of contracting Covid while incarcerated.<sup>6</sup>

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<sup>2</sup> Available at: <https://www.nytimes.com/live/2021/04/10/world/covid-vaccine-coronavirus-cases#prisoners-have-contracted-the-coronavirus-at-rates-three-times-as-high-as-others-in-the-us>.

<sup>3</sup> Available at: <https://www.nytimes.com/2021/05/03/health/covid-herd-immunity-vaccine.html>.

<sup>4</sup> Last visited on May 18, 2021. Notably, both MDC and MCC in New York City similarly report several “active” cases.

<sup>5</sup> The fall 2021 Jewish holidays begin with Rosh Hashana on September 7, 2021 at sundown; the last holiday ends on September 29, 2021. Because Mr. Binet is strictly observant of the Jewish holidays, we respectfully request that his surrender date be extended until after the Jewish holidays.

<sup>6</sup> Mr. Binet has yet to be vaccinated against Covid-19. He remains concerned about the vaccine’s side effects as his sister with similar preexisting health conditions suffered worrisome side effects

We have conferred with counsel for the government, who advised us that the government consents to a five-week adjournment to permit Mr. Binet to receive his designation, but objects to any further adjournment.

Respectfully Submitted,

/s/ IH

Henry E. Mazurek

Ilana Haramati

*Counsel for Defendant David Binet*

cc: Counsel of Record (*via ECF*)

The Court adjourns Mr. Binet's sentencing date until **AUGUST 3, 2021** for the reasons stated by defense counsel. Provided that Mr. Binet's BOP facility has by then been designated, Mr. Binet should be prepared to surrender on that date. The Clerk of Court is requested to terminate the motion at Dkt. No. 69.

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following her vaccinations. While we do not posit Mr. Binet's vaccination status as an independent reason for adjourning his surrender date, it remains a relevant consideration for the Court.